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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,)
)
)
v.) CRIMINAL ACTION NO.
) 2:16cr36
)
GERALD ANDREW DARBY,)
)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
June 10, 2016

BEFORE: THE HONORABLE ROBERT G. DOUMAR
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Elizabeth Yusi
Assistant United States Attorney
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE
By: Rodolfo Cejas
Assistant Federal Public Defender
Counsel for the Defendant

1 (Hearing commenced at 9:02 a.m.)

2 THE CLERK: Criminal case number 2:16cr36, United
3 States of America versus Gerald Andrew Darby.

4 Ms. Yusi, is the Government ready to proceed?

5 MS. YUSI: The Government is ready. Good morning,
6 Your Honor.

7 THE COURT: Good morning, Ms. Yusi.

8 THE CLERK: Mr. Cejas, is your client ready to
9 proceed?

10 MR. CEJAS: Yes, we are. Good morning, Your Honor.

11 THE COURT: You've now turned into a fashion man,
12 Mr. Cejas? You got a fancy white vest on this morning. It's
13 good to see you.

14 All right.

15 MR. CEJAS: Your Honor, this is coming on a joint
16 motion, first to have the case declared as designated as
17 complex litigation, and then, of course, to continue the
18 matter outside of speedy trial. I've discussed the matter
19 with my client. Mr. Darby is willing to waive his speedy
20 trial rights.

21 THE COURT: You can't waive speedy trial rights, Mr.
22 Cejas.

23 MR. CEJAS: I'm sorry.

24 THE COURT: But the question of complex litigation
25 is interesting because this involves some top secret

1 material; is that correct, sir?

2 MR. CEJAS: Yes, sir, Your Honor, and to be quite
3 frank with the Court, when we first got into the case, when I
4 first got into the case, had no idea that it would be as
5 involved as it has been and as we expect it to be. As the
6 Court is well aware, only a handful of these cases across the
7 country that have addressed this issue, and so it does
8 involve information that may be top secret. There's just a
9 variety of issues that we believe it requires much more time
10 to address.

11 THE COURT: You're cleared for top secret, aren't
12 you, Mr. Cejas, or are you?

13 MR. CEJAS: To be honest, Judge, I don't know.

14 THE COURT: Okay.

15 MR. CEJAS: I don't know.

16 THE COURT: Well, that does create a real problem
17 with regard to information. I only know that the Government
18 has some material and it starts getting into a situation
19 where they're asking for *ex parte* hearing. So when the
20 Government is asking for *ex parte* hearings, I always cringe a
21 little. But I do know that it involves some top secret
22 material.

23 MR. CEJAS: Yes, sir.

24 THE COURT: Either directly or indirectly,
25 especially with regard to discovery, Ms. Yusi, isn't that

1 correct?

2 MS. YUSI: Yes, Your Honor. There is that issue,
3 and I know the other issue -- well, the motion to compel
4 that's pending before the Court, as well, that we haven't had
5 to respond to yet. We respond to that next week.

6 MR. CEJAS: That's correct.

7 THE COURT: Well, it does involve some novel points.
8 I've never had a matter of pornography case that involved top
9 secret material. However, everything is unusual. Anyhow, I
10 do find it's novel and also complex. The clearances are
11 going to have to be obtained if you can obtain this. But, of
12 course, I haven't seen the nature of the material which the
13 Government is asking about.

14 MR. CEJAS: Yes, sir.

15 THE COURT: Because that all involves discovery
16 also, so I haven't seen that. I do find, however, that it
17 isn't going to be able to be tried next Tuesday.

18 MR. CEJAS: Yes, sir.

19 THE COURT: So I do find that it's complex. It's
20 going to take a lot of effort. These cases are arising, as
21 you pointed out, in a great many places, and Judge Morgan has
22 a similar matter before him at the same time.

23 MR. CEJAS: Yes, sir.

24 THE COURT: I do find as a fact that this is a
25 complex case. Therefore, I do find that there will be many

1 matters are going to have to come up before we get to trial.
2 The question is obtaining a trial date that fits in the
3 schedule. As you know, I squeezed you in this morning.

4 MR. CEJAS: Yes, sir.

5 THE COURT: But I was able to wind that case up
6 yesterday. Fortunately, I never thought we'd do it but we
7 did it somehow.

8 MR. CEJAS: Yes, sir.

9 THE COURT: In any event, I find as a fact that this
10 case is complex, novel and involves some serious matters
11 which will create a monstrous problem. Consequently, I find
12 that I'll allow a continuance. The only question is time.
13 So we have to get to the date.

14 MR. CEJAS: Yes, sir.

15 THE COURT: Ms. Baxter, what do we have?

16 THE CLERK: The earliest we have, Your Honor, is
17 September 27th.

18 THE COURT: How does that sound to you, Mr. Cejas?

19 MR. CEJAS: That's fine, Judge.

20 THE COURT: How about you?

21 MR. CEJAS: Do you have a date after that? That's
22 my birthday, something about trying on my birthday, maybe
23 that will bring me luck.

24 THE COURT: Bring you luck.

25 MR. CEJAS: That's true.

1 THE CLERK: October 18th.

2 MR. CEJAS: That's fine, Judge.

3 THE CLERK: October 18?

4 MR. CEJAS: That works.

5 THE COURT: How does that sound, Ms. Yusi?

6 MS. YUSI: That's fine, Your Honor. Thank you.

7 THE COURT: This case is continued until October the
8 18th, 2016 here in this court. Now, when is this motion?
9 Have you set this motion, Ms. Yusi, about the *ex parte*?

10 MS. YUSI: No, Your Honor. I filed my response in
11 Mr. Eure's case. Mr. Darby's response is due next Thursday,
12 and then I assume that he will file a response.

13 THE COURT: Let's see. Isn't this matter before
14 Judge Morgan at the same time?

15 MS. YUSI: It is, Your Honor. They're having a
16 hearing on Monday.

17 THE COURT: Monday? Why don't you wait until they
18 have their hearing, and then we will determine what we should
19 do.

20 MS. YUSI: That sounds good.

21 THE COURT: Because I don't assume there is going to
22 be a lot of difference, Ms. Yusi, in relation to the *ex parte*
23 hearing?

24 MR. CEJAS: Yes, sir.

25 THE COURT: But I'm concerned about if we get into

1 the top secret situation, the necessity to get a clearance
2 for the defense counsel.

3 MR. CEJAS: Yes, sir.

4 MS. YUSI: All right, Judge.

5 MR. CEJAS: I will explore that, Judge, just to find
6 out what it is I need to do.

7 THE COURT: Well, if you don't know, nine chances
8 are you're not cleared, Mr. Cejas.

9 MR. CEJAS: Yes, sir.

10 THE COURT: I'm not trying to indicate that you
11 wouldn't be. I'm merely saying that in order to properly
12 present a defense, I had no idea this case would involve any
13 top secret information, but obviously it may. I don't know
14 that it will, but I'll find out.

15 MR. CEJAS: Thank you, Your Honor.

16 THE COURT: If it does, we'll see where we're going.
17 In any event, this case is continued till October
18 the 18th, 2016.

19 MR. CEJAS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Hearing adjourned at 9:10 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

X _____ /s/ _____ x

Jody A. Stewart

X _____ 2-7-2017 _____ x

Date

JODY A. STEWART, Official Court Reporter